IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.335 of 2001.

Date of decision: 13.12.2006

Ghuni Devi ….. **Petitioner**

Versus

Ram Singh and others. ……. **Respondents**

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The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting ?[1]

For the petitioner : Mr.Ajay Mohan Goel,Advocate,

For respondent No.1 : Mr.O. P. Sharma,Advocate

For respondents No.2 & 3: Mr.Rajan Dewan, Addl. A. G.

Dev Darshan Sud,J.

The petitioner is aggrieved by the order of the Financial Commissioner Annexure P4, whereby the revision petition preferred by respondent Ram Singh against the order of Divisional Commissioner has been accepted.

Brief facts necessary for the disposal of the present petition are that the husband of the petitioner was working as Lambardar in Phati Dughilag, Tehsil & District Kullu. The respondent No.2 invited applications for the post of Lambardar by giving wide

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement*?**

publicity. Four persons applied, namely, Dhian Chand, Ram Singh, Murat Ram and Ghuni Devi. The Collector vide his order dated 2.11.1994 appointed respondent No.1 Ram Singh as Lambardar. According to the order passed by the Collector, the appointment was made in accordance with Chapter-IV of the H.P. Land Records Manual. According to the Collector, the facts to be kept in view while considering the suitability of a particular incumbent are; heredity, extent of property in the estate possessed by the candidate, service rendered to the State by the incumbent, or by his family, personal influence, character, ability and freedom from indebtedness and the strength and importance of the community etc. While considering the rival claim of the incumbent, the case of the petitioner was rejected primarily on the ground that she was a woman. He observes:-

> "I think a woman would not be the most appropriate candidate for appointment as a lambardar, especially when she is also not the sole land owner of the estate."

He then considers the case of respondent No.1 and holds that he is the most suitable candidate. The Collector has noticed that respondent No.1 had raised a loan to the extent of Rs.60,000/- from Khadi Board, which was the owner and has mortgaged his land. This according to the Collector was nothing but normal practice followed by villagers to augment their income. On an appeal having been preferred by the

petitioner before the Divisional Commissioner, the order of the Collector was set aside. The Commissioner held that according to his experience, in Kullu District, particularly women are more hardworking than the men folk and perform outdoor duties including tilling land and collection of land revenue etc. He also considered the fact relating to hereditary claims of the petitioner. The Divisional Commissioner in revision, has held that the District Collector has considered the facts and weighed the respective merits and demerits of the various incumbents for the post. He also makes reference to the case law which according to him was cited. I do not find any case being referred to in the judgment. The order is terse and does not in any manner say as to how the respective merits and demerits of the various incumbents have been considered.

At this juncture, reference may be made to the Punjab Land Revenue Rules (as applicable to the State of Himachal Pradesh) (hereinafter referred to as the Rules). Rule 15 provides for the factors to be considered for the first appointment of headman. Rule 30A states that in case of Lambardars of “Phatis” in Kullu District, the foregoing rules shall be read subject to he modification that in their appointment, the considerations shall be those prescribed in Clauses (b),(c) & (d) of Rule 15 & Rule 17 shall not apply to them. The factors to be considered are; the

extent of property owned/possessed in the estate by the candidate, service rendered to the State by the incumbent, or by his family, personal influence, character ability and freedom from indebtedness. Rule 15 deals with claim of hereditary rights has been excluded and the applicability of Rule 17 is excluded altogether.

Rules 15 & 17 read as under:

> **"15.** In the first appointment of headman, regard shall be had among other matters to:-
> a) his hereditary claims;
> b) extent of property in the estate possessed by the candidate;
> c) service rendered to the State by himself or by his family;
> d) his personal influence, character, ability and freedom from indebtedness;
> e) the strength and importance of the community from which selection of a headman is to be made;
> f) service rendered by himself or by his family in the national movements to secure freedom of India.
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> In the case of ex-headman of an estate or sub-division thereof in the territory now comprising the State of Punjab who had resigned or was dismissed on account of his participation in a national movement before partition and another headman was appointed in his place, the present incumbent of the post shall be removed irrespective of the provisions of rule 16 and the ex-headman would be appointed in his place, if he has not rendered himself unfit for appointment for any of the reasons given in rule 16 except imprisonment for a political offence before 15th August, 1947. In case, the ex-headman is no longer alive, a person of his family who would under the rules have been entitled to be headman if the resignation or dismissal had not intervened, would be appointed a headman. But where no such person exists there would be no need to remove the existing lambardar.

17. (i) In an estate, or sub-division thereof, owned chiefly or altogether by Government, a successor to the office of headman shall be selected with due regard to all the considerations, other than hereditary claims, stated in rule 15:

Provided that in such an estate, or sub-division thereof notified for the purpose by the Financial Commissioner the selection shall, as far as possible, be made in the manner prescribed by sub-rule (ii) if a suitable heir is forthcoming.

(ii) In other estates the nearest eligible heir according to the rules of primogeniture shall be appointed unless some special custom of succession to the office be distinctly proved, but subject in every case to the following provisions:-

(a) the claim of a collateral relation of the last incumbent to succeed shall not be admitted solely on the ground of inheritance, unless the claimant is a descendant in the male line of the paternal great-grandfather of the last incumbent;

(b) where headman has been dismissed in accordance with the provisions of rule 16, the Collector may refuse to appoint any of his heirs;

(1) If the circumstances of the offence, dereliction of duty, or disqualification, for which the headman was dismissed make it probable that he would be unsuitable as a headman.

(2) If there is reason to believe that he has connived at the offence or dereliction of duty for which the headman has been dismissed."

(3) If any disqualification for which the headman has been dismissed attaches to him.

(**4**) If he may reasonably be supposed to be under the influence of the dismissed headman or his family to an undesirable extent."

I have heard learned counsel for the parties.

It is not disputed before me that the appointment relates to Kullu where Rule 30A would be applicable, which reads as under:-

> "**30A.** In the case of Lambardars of "Phatis" in Kullu District, the foregoing rules shall be read subject to the modification that in their appointment, the considerations shall be those prescribed in Clauses (b),(c) & (d) of Rule 15. Rule 17 shall not apply to them.
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> (ii) In the phatis in waziri "Rupi" the Commendation of jagirdars shall be considered, in appointment of lambardars, who may be dismissed when he is abnoxious to the jagirdars."

On going through the record, I find that the consideration has not been in accordance with the rules. The Deputy Commissioner as also other authorities, namely, Divisional Commissioner and the Financial Commissioner were required to take into consideration the parameters as provided for in the Rules as extracted above. The Collector has gone awry in observing that the petitioner is a lady and, therefore, cannot perform her duties. To say is the least, confining the appointment on the basis of gender of a particular incumbent would be unconstitutional. The Financial Commissioner upheld the order passed by the Deputy Commissioner, without assigning any reason. Merely using the words that he has carefully considered the case and that he finds that the Collector has considered the respective merits and demerits of each incumbent, is not sufficient. What was required was to have assessed the

suitability of each candidate in accordance with rules. The record does not disclose such exercise having been undertaken, rather factors which are not relevant and are otherwise excluded by the rules, have been taking into consideration.

In these circumstances, I quash and set aside the order Annexure P4 passed by the Financial Commissioner. I further direct that the matter should be decided afresh by respondents No. 2 & 3 in accordance with rules after giving the parties an opportunity of presenting their respective case.

The entire exercise should be completed within a period of eight weeks from today.

This Court, while admitting the writ petition, had declined to grant any interim stay against the order of the Financial Commissioner. Under these circumstances, respondent No.1 can continue to discharge his duties which would be subject to the ultimate decision taken by the respondents No.2 & 3.

The writ petition is disposed of accordingly. There shall be no order as to costs.

(Dev Darshan Sud)
Judge.

December 13, 2006
(rana)